

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 229/Lab./AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 29 of 2010, dated 31-8-2012 of the Labour Court, Puducherry in respect of the industrial dispute raised by Thir K. Ganapathy against the management of M/s. Standard Polymers, Puducherry insisting the post of Supervisor instead of security work resulting the discharge of his services has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
Presiding Officer, Labour Court.

Friday, the 31st day of August 2012

I.D. No. 29/2010

S. Ganapathi .. Petitioner

Versus

The Managing Director,
Standard Polymers,
Villianur, Puducherry. . . Respondent

This industrial dispute coming on 30-8-2012 for final hearing before me in the presence of Thiru H.D. Kumaravelu, Advocate for the petitioner, Thiruvalargal A. Kanniappan, K. Balaji, R. Praveen Kumar and S. Suganthi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.177/AIL/Lab./J/2010, dated 24-8-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru K. Ganapathy against the management of M/s. Standard Polymers, Puducherry insisting the post of Supervisor instead of security work resulting the discharge of his services is justified or not?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working in the respondent company as Supervisor and also Printing Operator. He entered into service as Assistant on a consolidated monthly salary of ₹ 500 in Mylon Plastics (P) Limited, Odiampet with effect from 15-10-1998 and he was promoted as Packaging Supervisor with a consolidated monthly salary of ₹ 750. On 30-6-1992, he was promoted as Purchase Executive and was drawing a monthly consolidated salary of ₹ 900 and it was subsequently enhanced to ₹ 1,000 per month with effect from 30-9-1992.

On 30-9-1993 the petitioner service was regularised and posted as Shift in-charge and subsequently he was promoted as Shift Supervisor with effect from 1-10-1996 and fixed his pay at ₹ 1,040 and continued to service in the said Mylon Plastics (P) Limited, and have earned annual increments and the additional benefits extended by the company.

Subsequently M/s. Standard Polymers have taken over the said firm from February 2006 and he has been designated as Supervisor in the respondent company with all benefits till 26-12-2009. On 28-12-2009 the partner of the respondent company compelled him to work as watchman in the said firm. He was also compelled to come in night shift to look-after the work of watchman / security, though he was designated as Supervisor. In order to remove the petitioner from service, the management has arbitrary and unilaterally decided to insist the petitioner to work as security. The present management is wantonly taking vindictive action against the petitioner. Hence, this industrial dispute is filed for his reinstatement along with other benefits.

3. In the counter statement, the respondent has stated as follows:-

It is true that the petitioner was working in Mylone Plastics (P) Limited, from 15-10-1988 and the present respondent company took over the said Mylon Plastics from February 2006. After taking over Mylon Plastics (P) Limited, by the respondent, the petitioner was asked to look after the post of Dispatch Officer and during the month of December 2009, the management asked the petitioner to come for work in shift basis as Dispatch Officer and since sometimes

the consignments were dispatched during night shifts also, the petitioner was asked to discharge his duties as Dispatch Officer during the night shifts. The respondent never compelled the petitioner to work as watchman. All of a sudden without intimation, he did not turn up for his duty during the month of January 2010. The respondent never insisted the petitioner to work as security and never dismissed him from service. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PWs.1 to 3 were examined and Ex.P1 to Ex.P16 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R4 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The main contention of the petitioner is that he was working as Supervisor at the time of taking over the erstwhile management by name Mylon Plastics (P) Limited, and after taking over the said company by the respondent management, he was compelled to work as watchman and he was also compelled to come in night shift to look after the work of watchman and in order to remove him from service, the respondent management has arbitrary and unilaterally decided to insist him to work as security.

7. *Per contra*, the contention of the respondent is that during the month of December 2009, the management asked the petitioner to come for work in shift basis as Dispatch Officer and since sometimes the consignments were dispatched during night shifts also, the petitioner was asked to discharge his duties as Dispatch Officer during the night shifts and the respondent never compelled the petitioner to work as watchman. And all of a sudden, he did not turn up for duty from January 2010.

8. On the side of the petitioner, the petitioner examined himself as PW1. PW1 in his evidence has deposed that he entered into service as Assistant in Mylon Plastics (P) Limited., from 15-10-1988 and on 11-10-1990 he was promoted as Packaging Supervisor and then as Purchase Executive and on 30-9-1993 his service was regularised and posted as shift in-charge and then he was promoted as Supervisor from 1-10-1996. In order to prove his claim, he has marked the copy of the Posting Order, dated 15-10-1988 as Ex.P1, copy of the Promotion Order, dated 11-10-1990 as Ex.P2, copy of the Office order, dated 30-6-1992 as Ex.P3, copy of the Memorandum, dated 30-9-1992 as Ex.P4, copy of the Memorandum, dated 30-9-1993 as Ex.P5, copy of the

Memorandum, dated 30-9-1994 as Ex.P6, copy of the Memorandum, dated 30-9-1995 as Ex.P7, copy of the Memorandum, dated 30-9-1996 as Ex.P8. Ex.P1 to Ex.P8 prove the said version of the petitioner. These documents have not been challenged by the respondent and in fact, the respondent has admitted that the petitioner was working as Supervisor at the time of taking over the erstwhile management by name Mylon Plastics (P) Ltd., by the respondent management, but has stated that they never compelled the petitioner to work as security and the petitioner was asked to work as Dispatch Officer and since sometimes the consignments were dispatched during the night shifts also, the petitioner was asked to discharge his duties as Dispatch Officer during night shifts.

9. On the side of the respondent, the Managing Partner of the respondent company was examined as RW1. RW1 in his evidence has deposed that during the month of December 2009 the management asked the petitioner to come for work in shift basis as Dispatch Officer and all of a sudden without intimation, he did not turn up for his duty during the month of January 2010.

10. RW1 during the cross-examination has admitted that his company took over the Mylon Plastics (P) Ltd., with effect from February 2006 and the petitioner was observed as an employee in their company and he also admitted that the petitioner was working as Supervisor in the erstwhile company. In the above circumstances, if the respondent management thought to transfer the petitioner to some other posts, the transfer order would have issued to him. But no such transfer order has been produced and marked before this court. The petitioner has stated that there is no such post of Dispatch Officer in the respondent management. Hence, it is the duty of the respondent to prove that there exists a post of Dispatch Officer in their company. But the respondent has not produced any evidence to show that there is a post of Dispatch Officer in the respondent company.

11. On the side of the petitioner, the copy of the letter sent by the employees of the respondent company to the Conciliation Officer has been marked as Ex.P10. A perusal of Ex.P10 reveals that the employees of the respondent company complained to the Conciliation Officer that the petitioner was working as Supervisor in the respondent company and on 28-12-2009, the Administrative Officer of the respondent company directed the petitioner to work as watchman, otherwise he will be ousted from service and due to his family conditions, the petitioner was working as watchman for one week till 3-1-2010. In Ex.P10, nineteen employees were signed and two of them by name Sundaravadivelu and one Tamizharasan were examined as PWs.2 and 3.

12. PW2 in his evidence has deposed that he joined in the respondent company in the year 2006 and at that time, the petitioner was working as Supervisor and the

respondent company directed the petitioner to work as watchman and the petitioner has informed him that the Administrative Officer scolded him often and the petitioner worked as watchman for one week and then he did not turn up for his duty. PW3 in his evidence has deposed that the petitioner was working as Supervisor and then he was working as watchman and thereafter he did not turn up for his duty due to mental agony for his depromotion by the respondent company. During the cross-examination, PW3 has categorically stated that while he was on duty, he saw the petitioner standing in the main gate as watchman. RW1 during the course of cross-examination has admitted that PWs.2 and 3 are still working in their company. Hence, there is no necessity for PWs.2 and 3 to depose falsehood as against their master and consequently, I believe the evidence of PWs.2 and 3. The oral evidence of PWs.2 and 3 and the documentary evidence under Ex.P10 would clearly prove that the petitioner, who was working as Supervisor, was compelled to work as watchman in the respondent company.

13. On the side of the petitioner, copy of the letter issued by the respondent to the petitioner was marked as Ex.P9. In Ex.P9, it has been stated as follows:-

"We, Standard Polymers, have taken over Mylon Plastics Pvt. Limited from February 2006. From February 2006 onwards all the benefits like EPF, ESI, Gratuity etc., which you have availed from Mylon Plastics Pvt. Limited from 20-10-1988 shall continue in Standard Polymers."

From Ex.P9, it can be seen that the respondent management gave assurance to the petitioner that all benefits, which he has availed from Mylon Plastics shall continue in the present management. In the above circumstances, it is the duty of the respondent to safeguard the interest of his employee, who was observed by them under Ex.P9. But contrary to Ex.P9, the respondent insisted the petitioner to work as watchman, which is unfair practice under labour legislation.

14. PW.1 has stated that right from the entering into service in Mylon Plastics (P) Ltd., till 26-12-2009, he was working in various capacities like Assistant, Packaging Supervisor, Purchase Executive, Shift in-charge and Supervisor and during his 22 years of unblemished service, he had discharged his dedicated service to the fullest satisfaction of his superiors and now the partner of the present administration directed him to discharge his duties as security on night duty amounts to degrading his post and the same is arbitrary and unilateral to wreck vengeance against him.

15. But RW1 has stated that the petitioner left the service voluntarily and he has also issued a letter stating that he left his job on his own accord. In order to prove his claim, RW1 has marked the said letter as Ex.R4. The contents of Ex.R4 are as follows:-

“நான் 2010 ஜனவரி மாதம் 4ந் தேதியுடன் வேலையை விட்டு நின்றுவிட்டேன். கடந்த ஆண்டு ஏப்ரல் 2009 முதல் டிசம்பர் 2009 வரையிலான போனஸ் ரூபாய் 3260 பெற்றுக் கொண்டேன்”.

During the cross-examination, RW1 has admitted that there is no mention in Ex.R4 that the petitioner has resigned his job on his own volition. Hence, this court has to see under what circumstances, PW1 has given Ex.R4 to the respondent. As already stated, the petitioner was working as Supervisor in the erstwhile management and on taking over the said company by the respondent, the petitioner was compelled to work as watchman, which has been clearly established by the petitioner through his oral evidence and examining PWs.2 and 3. Admittedly, the petitioner was working in the respondent company for more than 22 years and he was working as Supervisor in the erstwhile company and also in the respondent company for some period and hence it is not fair for the respondent to direct the petitioner to work as watchman to degrade his post and this court has come to the conclusion that in order to remove him from service, the respondent management has arbitrary and unilaterally decided to insist him to work as security, which is against labour law.

16. The learned counsel for the petitioner during the argument has submitted that due to misunderstanding between the petitioner and the respondent management, the petitioner was insulted by depromoting him and hence suitable order has to be passed by this court to reinstate him in the respondent company.

17. As already stated, there was misunderstanding between the petitioner and the respondent management and in the above circumstances, if any order passed by this court to reinstate him into service, there will not be any smooth relationship between them. Hence, I feel that instead of reinstate him into service, he can be given monetary compensation. There is no dispute that the petitioner was working in the respondent company for more than 22 years and considering the age and the services rendered in the respondent company, a sum of ₹ 1,00,000 is awarded to the petitioner towards monetary compensation. Apart from the said monetary compensation, the petitioner is also entitled to other benefits like E.P.F., E.S.I., gratuity, bonus *etc.*, as applicable to rules. Accordingly, this point is answered.

18. In the result, the industrial dispute is partly allowed and the respondent is directed to pay a sum of ₹ 1,00,000 to the petitioner towards the monetary compensation. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of August, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

- PW. 1 — 31-10-2011— Ganapathi
PW. 2 — 19-6-2012— Sundaravadivelu
PW. 3 — 21-6-2012— Tamizharasan

List of witnesses examined for the respondent:

- RW. 1 — 27-2-2012— Chandrasekar

List of exhibits marked for the petitioner :

- Ex.P1 — Copy of the Posting order, dated 15-10-1988 issued to the petitioner.
Ex.P2 — Copy of the Promotion order, dated 11-10-1990.
Ex.P3 — Copy of the Office order, dated 30-6-1992
Ex.P4 — Copy of the Memorandum, dated 30-6-1992
Ex.P5 — Copy of the Memorandum, dated 30-6-1993
Ex.P6 — Copy of the Memorandum, dated 30-6-1994
Ex.P7 — Copy of the Memorandum, dated 30-6-1995
Ex.P8 — Copy of the Memorandum dated 30-6-1996
Ex.P9 — Copy of the letter, dated 30-1-2006 issued to the petitioner
Ex.P10 — Copy of the letter, issued to Labour Officer.
Ex.P11 — Copy of the letter issued by Head Master to the petitioners.
Ex.P12 — Copy of the Pay slip of the petitioner
Ex.P13 — Copy of the letter, dated 21-1-2010 sent to Labour Officer.
Ex.P14 — Copy of the letter, sent to the Labour Officer dated 11-3-2010.
Ex.P15 — Copy of Failure Report, dated 19-4-2010.
Ex.P16 — Copy of letter, dated 9-6-2010 sent to Labour Commissioner.

List of exhibits marked for the respondent :

- Ex.R1 — Copy of the counter, dated 10-2-2010 to Labour Officer.
Ex.R2 — Copy of the petition, dated 22-1-2010 to the Labour Officer.

Ex.R3 — Copy of the Rejoinder, dated 11-3-2010 to the Labour Officer.

Ex.R4 — Letter sent by the petitioner to the respondent, dated 29-11-2010.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(GO. Rt. No. 230/Lab./AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 6 of 2006, dated 21-11-2012 of the Labour Court (Karaikal Camp), Puducherry in respect of the industrial dispute between the management of M/s. Soundararaja Mills Limited, Nedungadu and Nedungadu Soundararaja Mills Thozhilalargal Sangam (CITU) over non-payment of subsistence allowance to 5 workmen for the month of June 2004 has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms.No.20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
Presiding Officer, Labour Court
(Karaikal Camp).

Wednesday, the 21st day of November 2012.

I.D. No. 6/2006

The Secretary,
CITU, No.14, Thennur,
Surakudy Post,
Thirunallar, Karaikal.

.. Petitioner

Versus

The Management,
Soundararaja Mills Limited,
Nedungadu, Karaikal.

.. Respondent

This industrial dispute coming on this day before me for final hearing before me in the presence of Thiru N. Ramar, representative for the petitioner, Thiru R. Thambiraj, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.71/2006/Lab./AIL/J, dated 12-5-2006 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the demand of subsistence allowance at 50% for the first 90 days, 75% up to 180 days and afterwards 100% by the Nedungadu Soundararaja Mills Thozhilalargal Sangam, Karaikal to the workers *viz.*, Tvl. K. Mohandass, S.R. Rajendiran, S. Sagayaraj, N. Chandirasegaran and P.R. Gunasegaran from the management of M/s. Soundararaja Mills, Karaikal is justified or not ?

(2) If justified, to what relief, they are entitled to ?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed ?

2. The petitioner, in his claim statement, has averred as follows:

The petition mentioned workmen namely K. Mohandass, S.R. Rajendiran and S. Sagayaraj were suspended on 22-8-2003, 30-9-2003 and 14-11-2003 respectively and as per section 10A (1)(a)(b) of Industrial Employment (Standing Orders) Act, 1946, they were paid the subsistence allowance at 50% of their respective monthly salary for 90 days from the date of suspension and 75% for a period exceeding the said 90 days. But without any notice, the subsistence allowance has not been paid to them from June 2004. Hence, they approached the respondent management, who told that as per the said order, the subsistence allowances should have been paid at 50% for a period of 180 days from the date of suspension and 75% beyond 180 days and since the said workmen were paid excess amount, the subsistence allowance has not been paid to them to adjust the excess amount paid. The said procedure followed by the respondent management is applicable when the enquiry was conducted by the outside agency of the respondent. But in this case, the respondent management has conducted the domestic enquiry against them, for which the said provision is not applicable. Hence, the said workmen raised a dispute before the Labour Officer (Conciliation) and in the Conciliation the respondent management has not come forward to pay the said subsistence allowance. Therefore, the present industrial dispute is filed to pay the subsistence allowance of ₹ 31,865, ₹ 2,529 and ₹ 27,897 to the said Mohandass, S.R. Rajendiran and S. Sagayaraj respectively.

3. In the counter statement, the respondent has stated as follows :-

There are two recognised trade unions *viz.*, INTUC and LPF functioning in the respondent mill and the workmen are the members of the one or the other unions. No employee in the respondent mill is the member of the petitioner union. Further the domestic enquiry proceedings were conducted into the charges levelled against the said workmen by the outside agency of the respondent mill and hence it is correct on the part of the respondent to pay the subsistence allowance as per clause 14(4) (ii) of Industrial Employment (Standing Orders) Central Rules, 1946. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P3 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R4 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

Originally, the reference was made to this court for five workmen of the respondent management namely, Tvl. K. Mohandass, S.R. Rajendiran, S. Sagayaraj, N. Chandirasegaran and P.R. Gunasegaran. But the learned authorised representative for the petitioner has submitted before this court that since there is no representation from the workmen namely Tvl. N. Chandirasegaran and P.R. Gunasegaran, he is not pressed the industrial dispute against them. Hence, this court is proceeded with this case as against the remaining workmen namely Tvl. K. Mohandass, S.R. Rajendiran and S. Sagayaraj.

7. The contention of the petitioner is that the petition mentioned workmen namely, K. Mohandass, S.R. Rajendiran and S. Sagayaraj were suspended on 22-8-2003, 30-9-2003 and 14-11-2003 respectively and as per section 10A (1)(a) (b) of Industrial Employment (Standing Orders) Act, 1946, they were paid the subsistence allowance at 50% of their respective monthly salary for 90 days from the date of suspension and 75% for a period exceeding the said 90 days, but without any notice, the subsistence allowance has not been paid to them from June 2004 and therefore, the present industrial dispute is filed to pay the subsistence allowance of ₹ 31,865, ₹ 2,529, and ₹ 27,897 to the said Mohandass, S.R. Rajendiran and S. Sagayaraj respectively. In order to prove his contention, the said K. Mohandass was examined as PW.1 and through him, Ex.P1 to Ex.P3 were marked. Ex.P1 is the copy of the letter, dated 15-7-2004 sent to the Labour Officer (Conciliation), Ex.P2 is the copy of the letter, dated 17-8-2004 sent to the Labour Officer (Conciliation) and Ex.P3 is the copy of the failure report, dated, 29-3-2005.

8. *Per contra*, the contention of the respondent is that the domestic enquiry proceedings were conducted into the charges levelled against the said workmen by the outside agency of the respondent mill and hence it is correct on the

part of the respondent to pay the subsistence allowance as per clause 14(4) (ii) of Industrial Employment (Standing Orders) Central Rules, 1946. In order to prove his contention, the Personnel Manager of the respondent mill was examined as RW.1 and through him, Ex.R1 to Ex.R4 were marked. Ex.R1 is the copy of the notice of enquiry, dated, 2-1-2004 to both parties by the Labour Officer, Ex.R2 is the copy of the letter dated, 17-8-2004 to the Labour Officer, Ex.R3 is the copy of the failure report, dated 29-3-2005 and Ex.R4 is the copy of the notification, dated 12-5-2006.

9. When the said matter was pending for arguments, the representative of the petitioner has filed a calculation memo and submitted that as per the said calculation, the petition mentioned workmen namely, S. Sagayaraj, K. Mohandass and S.R. Rajendran are entitled to receive a sum of ₹ 6,820, ₹ 5,918, and ₹ 7,399, respectively. The learned counsel for the respondent has agreed to pay the said amount to the said workmen. Hence, this court is directed the respondent to pay the said amount to the said workmen. Accordingly, this point is answered.

10. In the result, the industrial dispute is partly allowed and the respondent is directed to pay a sum of ₹ 6,820, ₹ 5,918, and ₹ 7,399 to their workmen namely Tvl. S. Sagayaraj, K. Mohandass and S.R. Rajendran respectively. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of November 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witnesses examined for the petitioner:

P.W. 1 — 20-10-2010 — K. Mohandass

List of witnesses examined for the respondent:

R.W. 1 — 20-2-2012 — John Amalraj

List of exhibits marked for the petitioner:

Ex.P1 — Copy of the letter, dated 15-7-2004 sent to the Labour Officer (Conciliation).

Ex.P2 — Copy of the letter, dated 17-8-2004 sent to the Labour Officer (Conciliation).

Ex.P3 — Copy of the failure report, dated 29-3-2005.

List of exhibits marked for the respondent:

Ex.R1 — Copy of the notice of enquiry, dated 2-1-2004 to both parties by the Labour Officer.

Ex.R2 — Copy of the letter, dated 17-8-2004 to the Labour Officer.

Ex.R3 — Copy of the failure report, dated 29-3-2005

Ex.R4 — Copy of the notification, dated 12-5-2006.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 231/Lab./AIL/J/2012, dated 24th December 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 30 of 2010, dated 10-10-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Kumaran Gas Agencies and its workmen Thiru R. Rajendiran and Thiru K. Ravi @ Ramasamy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Wednesday, the 10th day of October 2012

I.D. No. 30/2010

1. Rajendiran,
S/o. Rangasamy,
17-A, Naduthuru, Velrampet,
Puducherry.

2. Ravi @ Ramasamy,
S/o. Kaliappan,
No.7, 3rd Cross Street,
Periyar Nagar, Nellithoppu,
Puducherry.

.. Petitioners

Versus

The Managing Director,
Kumaran Gas Agencies,
Puducherry.

.. Respondent

This industrial dispute coming on 6-10-2012 for final hearing before me in the presence of Thiruvalargal P.R. Thiruneelakandan and Saravanan, Advocates for the petitioners, Thiru J. Jayaraman, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 180/AIL/Lab./J/2010, dated 1-9-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioners and the respondent, *viz.*,

(1) Whether the dispute raised by the petitioners *viz.*, Thiruvalargal R. Rajendiran and K. Ravi @ Ramasamy against the management of M/s. Kumaran Gas Agencies, Puducherry over non-employment is justified or not?

(2) If justified, to what relief, the petitioners are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioners, in their claim statement, have averred as follows:

The respondent obtained an agency from the Hindustan Petroleum Corporation Limited for distributing the HP cylinder to the customers at Puducherry. On 21-6-1998 the petitioners were appointed as delivery boys for supplying the HP cylinder to the customer's door steps. Though Hindustan Petroleum Corporation Limited paid a better wage to the delivery boy, the respondent has paid very meagre wage of ₹ 900 per month. Apart from that till 2005, the respondent had not deducted and contributed E.S.I. and P.F. despite the fact that more than 20 delivery boys had been employed. Hence, to protect the interest of the delivery boys, the petitioners initiated steps to form a trade union and formed a trade union in the name and style "Kumaran Gas Agencies Thozhilalar Nala Sangam" and registered the same on 9-8-2004. The second petitioner was elected as Secretary and the first petitioner was elected as Vice-Secretary. Then the petitioners submitted the first charter of demand on 21-3-2005 before the respondent, demanding wage increase and other allowances. The respondent did not want any trade union and had not come forward to negotiate with the trade union members about their charter of demand. Hence, the second petitioner being the Secretary of the trade union issued a strike notice to the respondent to conduct the token strike for one day on 8-6-2005 and also the trade union raised the dispute before the Labour Officer (Conciliation) over the said charter of demand.

The Labour Officer (Conciliation) initiated the conciliation proceedings and issued notice, dated 25-5-2005 to the respondent and immediately on receipt of the said notice, the respondent suspended the petitioners and other office bearers, dated 9-6-2005. As against the said suspension order, the trade union prepared a complaint before the Conciliation Officer and the Conciliation Officer took the issue in his hand and issued conciliation notice, dated 13-6-2005 to the respondent over the dispute of charter of demand for wage revision and after intervention of the Conciliation Officer, the respondent reinstated all the workers including the petitioners. On demanding wage revision by the petitioners, a sum of ₹ 1,000 was increased by the respondent in the year 2005, but had not considered the other demands of the union. Hence, the petitioners persisted with the other demands and the respondent had annoyed with the petitioners union activity and denied employment to the second petitioner from 1-7-2009 and the first petitioner from 7-9-2009 without assigning any reason. Hence, the petitioner has raised the industrial dispute for their reinstatement and other benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioners were working as delivery men in the respondent gas agency and right from the beginning, there was various allegations of misconduct such as non-delivery of cylinders to the customers, delay in delivery and delivering cylinder to non-subscribers. Whenever the management tried to initiate action, they pleaded guilty and sought apology.

In the year 2009, the management had taken policy decision keeping in mind the directions of Hindustan Petroleum Corporation Limited that there should not be even a single complaint from the customers regarding delivery of cylinders. But there were complaints of non-delivery of cylinders and when such complaints were looked into by the management, it was found that some of the cylinders given to the petitioners had not reached the customers. The respondent demanded reasons from the petitioners for such misconduct and they were unable to answer the management's questions and fearing the criminal prosecution, the abovesaid workers unauthorisedly absented themselves from duty.

There has been an inordinate delay in raising the dispute and the same has not been explained and it shows that the dispute raised is an after thought. Hence, they pray for dismissal of the industrial dispute

4. On the side of the petitioners, they examined themselves as PWs.1 and 2 and Ex.P1 to Ex.P21 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R10 were marked.

5. *The point for determination is:*

Whether the petitioners can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The contention of the petitioners is that they were working as delivery boys in the respondent management for more than 12 years and the respondent had orally terminated their service and at the time of termination, they were Joint Secretary and Secretary in the trade union and they were terminated from service as a measure of victimisation on account of their union activity.

7. In order to prove their claim, the first petitioner was examined as PW.1 and the second petitioner was examined as PW.2. PWs.1 and 2 in their evidence have deposed that they were elected as Vice-Secretary and Secretary respectively and submitted the charter of demand for wage revision and the copy of the said wage revision is marked as Ex.P5 and since the respondent management refused to negotiate with them regarding the issue of charter of demand, on 24-5-2005 on behalf of the trade union, they issued a strike notice under Ex.P6 to conduct one day token strike on 8-6-2005. PWs.1 and 2 further deposed that on behalf of the trade union, they raised a dispute over the charter of demand for wage revision before the Labour Officer and then the conciliation notice under Ex.P7 was issued to the respondent and after attending the conciliation meeting, the respondent issued a suspension order to them and five other employees and the said suspension order was marked as Ex.P8. PWs.1 and 2 further deposed that against the suspension, the complaint was made to the Conciliation Officer on 9-6-2005 under Ex.P9 and on receipt of the said complaint, the Conciliation Officer issued a notice to the respondent on 13-6-2005 under Ex.P10 and after intervention of the Conciliation Officer, the respondent reinstated them and after reinstatement, they continued their union activity and the respondent annoyed with their union activity, decided to victimise them and accordingly they denied employment to them.

8. *Per contra*, the contention of the respondent is that there were complaints of non-delivery of cylinders and when such complaints were looked into by the management, it was found that some of the cylinders given to the petitioners had not reached the customers and the respondent demanded reasons from the petitioners for such misconduct and they were unable to answer the management's questions and fearing the criminal prosecution, the abovesaid workers unauthorisedly absented themselves from duty.

9. In order to prove their claim, the Manager of the respondent management was examined as RW.1. RW.1 in his evidence further stated that Ex.R1 to Ex.R4 are the complaints received in respect of the delivery area of the petitioners, Ex.R5 is the report by the Sales Officer of Hindustan Petroleum, who conducted the surprise checks and Ex.R6 and Ex.R7 are the extract of the Attendance Registers, which reveals that the petitioners were absent from 1-7-2009.

10. Ex.R6 and Ex.R7 are one and the same, which are Attendance Registers pertain to the month of June 2009 and on perusal of Ex.R6 and Ex.R7, it is seen that as against column of the first petitioner, the attendance was marked as (x) which referred as present and later from 15-6-2009 onwards the said attendance register was over written and altered as (a), which referred as absent. Therefore it makes clear that Ex.R6 and Ex.R7 have been altered and there is no explanation offered by the respondent for the said alteration, as rightly argued by the learned counsel for the petitioners. Further according to the first petitioner, he was denied employment from 7-9-2009. But the respondent has not produced the Attendance Register pertaining to the September 2009.

11. On the other hand, PW.1 and PW.2 in their evidence have deposed that they continuously requested the respondent to provide employment, but the respondent refused to give employment and hence they had found no other way than to send a letter, dated 19-4-2010 to the respondent requesting him to provide employment. The letter, dated 19-4-2010 sent by the first petitioner and the register postal receipt affixed on the letter has been marked as Ex.P12 and the letter, dated 19-4-2010 sent by the second petitioner has been marked as Ex.P13 and on receipt of the said letters, the respondent had not given any written reply to them. Ex.P12 and Ex.P13 have not been challenged by the respondent. In fact, RW.1 in his evidence has admitted that they received Ex.P12 and Ex.P13, but they have not sent any reply to them. The relevant portion of his evidence runs as follows:-

“19-4-2010 அன்று 1-வது மனுதாரர் எழுதிய கடிதம் பதிவுத் தபாலில் கிடைத்தது. ம. சா. ஆ. 12-க்கு பதில் கடிதம் அனுப்பவில்லை. 2-வது மனுதாரர் 19-4-2010-ல் பதிவுத் தபால் அனுப்பியது கிடைத்தது. ம. சா. ஆ. 13-க்கும் பதில் கடிதம் எழுதவில்லை என்றால் சரிதான்”.

In the above circumstances, the contention of the respondent that the petitioners themselves absented from duty from 15-6-2009 and 1-7-2009 respectively are false and baseless and hence it cannot be taken into consideration. Even assuming that the petitioners are unauthorised absent, it is the duty of the respondent to issue show cause notice to the petitioners calling for their explanation and on receipt of the explanation, if

the respondent is not satisfied, the charges should be framed against the petitioners if lapses any and the enquiry will have to be conducted and sufficient opportunities have to be given to the petitioners and after obtaining the enquiry report, the order shall be passed. In this regard, it is pertinent to refer the following decisions, which are relevant to this case:-

1988 I L.L.N. Page 259:

“Industrial Dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - It is for employer to prove such abandonment -Labour Court expected to follow judicial procedure should not depend on unverified statement to come to conclusion that it was workman who had refused to resume work.”

2002 (4) L.L.N. Page 850:

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable”.

But in this case, the respondent has not followed the settled procedure and has not even afforded any opportunities to the petitioners, which is illegal and unjustified.

12. According to the respondent, there were complaints of non-delivery of cylinders and when such complaints were looked into by the management, it was found that some of the cylinders given to the petitioners had not reached the customers. In order to prove his claim, RW.1 has marked the complaints received from the area people as Ex.R1 to Ex.R4. In Ex.R1 to Ex.R4, it has been stated that the cylinder has not been received even after registration by the respective customers. There is no specific allegation against the petitioners. Further none of the executants of the documents have been examined before this court to prove that the petitioners have not delivered the cylinders to the customers in time, as alleged by the respondent.

13. RW.1 has marked the copy of the undertaking given by the other employees as Ex.R8. But Ex.R8 is no connection with the allegation of non-delivery of cylinder or unauthorised absent of the petitioners and it does not disclose what was the irregularity or the mistake committed by the employees. Ex.R9 and Ex.R10 are the undertaking given by the petitioners and in the said undertaking, the petitioners have agreed that they will deliver the cylinder to the customers promptly and if any violation in delivering the cylinder, they are ready

to face any enquiry. But as already stated, the respondent has failed to prove that the petitioners have not delivered the cylinder to the customers in time. Hence, Ex.R9 and Ex.R10 have no way relevance to the denial of employment to the petitioners. In the above circumstances, the termination of both petitioners by the respondent is illegal and the same is liable to be set aside.

14. As far as the back wages are concerned, it is the duty of the respondent to prove the petitioners were gainfully employed during the period of termination. But the respondent has not produced any document or lead any evidence to prove that the petitioners were gainfully employed. In the absence of any such proof of gainful employment, the petitioners are entitled for reinstatement with continuity of service with full back wages. Accordingly, this point is answered.

15. In the result, the industrial dispute is allowed and the petitioners are entitled for reinstatement with continuity of service, full back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 10th day of October 2012.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioners:

- PW.1 — 3-11-2011 — Rajendiran
PW.2 — 25-6-2012 — Ravi @ Ramasamy

List of witnesses examined for the respondent:

- RW.1 — 5-9-2012 — Oumacandane

List of exhibits marked for the petitioner:

- Ex.P1 — Application for registration of Trade Union, dated 17-3-2004.
Ex.P2 — Trade Union Registration Certificate, dated 9-8-2004.
Ex.P3 — E.S.I. identity card of the first petitioner
Ex.P4 — E.S.I. identity card of the second petitioner
Ex.P5 — Charter of demand raised by the petitioners, dated 21-3-2005.
Ex.P6 — Strike notice given to the respondent, dated 21-3-2005.
Ex.P7 — Conciliation enquiry notice, dated 25-5-2005
Ex.P8 — Suspension order, dated 9-6-2005
Ex.P9 — Complaint before Conciliation Officer, dated 9-6-2005.
Ex.P10 — Conciliation notice of enquiry, dated 13-6-2005
Ex.P11 — Petitioners' and other workers letter, dated 11-6-2005.

- Ex.P12 — 1st petitioner's letter to the respondent, dated 19-4-2010.
- Ex.P13 — 2nd petitioner's letter to the respondent, dated 19-4-2010.
- Ex.P14 — 1st petitioner's dispute raised before Conciliation Officer, dated 5-5-2010.
- Ex.P15 — 2nd petitioner's dispute raised before Conciliation Officer, dated 5-5-2010.
- Ex.P16 — Conciliation enquiry notice, dated 8-6-2010
- Ex.P17 — Conciliation enquiry notice, dated 8-6-2010
- Ex.P18 — Respondent's reply, dated 7-6-2010
- Ex.P19 — Failure report, dated 5-8-2010
- Ex.P20 — Government reference, dated 1-9-2010

List of exhibits marked for the respondent:

- Ex.R1 to Ex.R4 — Consumer complaint
- Ex.R5 — Report by Sales Officer, dated 30-6-2009
- Ex.R6 and Ex.R7 — Attendance Registers for June 2009
- Ex.R8 — Undertaking
- Ex.R9 — Undertaking given by the first petitioner, dated 17-6-2005.
- Ex.R10 — Undertaking given by the second petitioner, dated 17-6-2005.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (HEALTH)

(G. O. Ms. No. 53, dated 11th December 2012)

NOTIFICATION

Pursuant to the G. O. Ms. No. 34, dated 24-8-1995, G.O. Ms. No. 46, dated 25-9-1995, G.O. Ms. No. 50, dated 4-11-1997 and G.O. Ms. No. 7, dated 23-2-2005 of Health and Welfare Department (Health), Puducherry and G.O. Ms. No. 3, dated 4-1-2010 of Chief Secretariat (Health), Puducherry the Lieutenant-Governor, Puducherry is pleased to extend the terms of the following committees constituted for implementation of the Pulse Polio Immunization Programme in the Union territory of Puducherry for a further period of 2 years up to August 2013 beyond the dates mentioned against each.

- | | | | |
|-------|-------------------------------|----|-----------|
| (i) | State Steering Committee | .. | 31-8-2011 |
| (ii) | District Steering Committee | .. | 31-8-2011 |
| (iii) | State Co-ordination Committee | .. | 31-8-2011 |
| (iv) | Pulse Polio Media Committee | .. | 31-8-2011 |

2. The following 4 non-official members included in the District Steering Committee for Karaikal in G.O. Ms. No. 50, dated 4-11-1997 are deleted from the District Steering Committee due to the reasons stated against each.

Thiruvalargal :

- | | | | |
|-------|---|----|-----------------------------|
| (i) | V.G. Rengasamy,
Balaji Nagar, Karaikal. | .. | Expired |
| (ii) | G.K. Narayanasamy,
84/1, Lemaire Street, Karaikal. | .. | Not willing
to continue. |
| (iii) | George,
Jeevanandam Street, Karaikal. | .. | Not willing
to continue. |
| (iv) | M.K.S. Aboubackar Maricar,
84, Perumal Koil Street,
Karaikal. | .. | Expired |

(By order of the Lieutenant-Governor)

V. JEEVA,
Under Secretary to Government (Health).

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam. Cell/2012-13.

Puducherry, the 17th December 2012.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Register Number 305870 of April 1993, in respect of A. Devi, an ex-pupil of Chevalier Sellane Government Higher Secondary School, Kalapet is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

R. KALAISELVAN,
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam. Cell/2012-13.

Puducherry, the 17th December 2012.

NOTIFICATION

It is hereby notified that the original Matric Mark Certificate, bearing Serial Number MAT 0202457 under Register Number 344101 of April 2004, in respect